

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 796 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BHARATBHAIJIVABHAI VAGRI

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL for Petitioner

Mr.R.M.Chauhan, GOVERNMENT PLEADER for Respondent

No. 1, 2, 3

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 10/08/98

ORAL JUDGEMENT

1. The petitioner has filed this petition under Article 226 of the Constitution of India challenging the

legality and validity of the order, dated 24.1.1998 passed by the Police Commissioner, Raajkot city under section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA Act").

2. In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on three prohibition cases which are at the investigating stage and statements of three witnesses whose identity has not been disclosed claiming privilege under section 9(2) of the Act for the alleged incidents, dated 25.7.97, 26.12.1997 and 12.1.1998. On all these occasions concerned witnesses were beaten on the ground that the witnesses refused to keep a can containing liquor at his place on the suspicion that the concerned witness being the informant to the police or that the concerned witness refused to retain the gunny bag containing country liquor at his shop. On all these occasions concerned witnesses were beaten, many persons gathered, however, they all started running helter skelter when the petitioner ran towards them with open knife. Therefore atmosphere of fear was created. Taking into consideration this material, the detaining authority recorded finding that the petitioner being a "bootlegger" within the meaning of Section 2(b) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order passed the impugned order of detention against the petitioner which has been challenged by the petitioner by way of this petition.

3. On behalf of the detenu, it was contended that even if the allegations made against the detenu are accepted as true, it is too much to brand her as a bootlegger. The Supreme Court in Piyush Kantilal Mehta vs Commissioner of Police, Ahmedabad city, AIR 1989 SC 491 on similar allegations made against the detenu in that case has held that the offences alleged against the detenu in the order of detention and also the allegations made by the witnesses could not be said to have created any feeling of insecurity or panic or terror among the members of the public of the area giving rise to the question of maintenance of public order. The order of detention could not therefore be upheld. In view of this decision, it is not possible for me to uphold the order of detention in the present case. The allegations made against the detenu by the witnesses are minor incidents of beating by the detenu and which could not be said to create feeling of insecurity among the general public. In view of this, the order of detention is vitiated.

4. In the result, this petition is allowed. The order of detention dated 24.1.1998 is quashed and set aside. The detenu--Bharatbhai Jivabhai Vaghri is ordered to be released forthwith, if not required in connection with anyother offence. Rule is made absolute accordingly with no order as to costs.

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